CF 2004

(3)

**IN THE HIGH COURT OF CHHATTISGARH**

**AT: BILASPUR**

**W.P. No. 2231 OF 2004**

**PETITIONER**: (1) Mahendra Kumar Jain, aged 50 years, son of Shri Kanchhedi Lal Jain, Sub-Engineer, Janpad Panchayat Kasdol, district Raipur (Chhattisgarh)

(2) Vijay Kumar Jain, aged 47 years, son of Shri Puran Chand Jain, Sub-Engineer, resident of Paras Nagar Kasdol, district Raipur (Chhattisgarh)

P. R. No. 2229/04
Presented by Shri ... Jain
dated ... 26-4-04

**VERSUS**

**RESPONDENTS** : (1) Janpad Panchayat Kasdol, district Raipur, through the Chief Executive Officer, Janpad Panchayat Kasdol, district Raipur (Chhattisgarh)

(2) Chief Executive Officer, Jila Panchayat (Development) Raipur, district Raipur (Chhattisgarh)

(3) State of Chhattisgarh through the Secretary, department of Water Resources, Raipur.

RECEIVED-COPY
26.4.04
Clerk to A.G. Bilaspur

**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR OTHER SUITABLE WRIT/WRITS, ORDER/ORDERS, DIRECTION/ DIRECTIONS.**

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर (46)

# आदेश पत्रक

मामला क्रमांक W.P. 2231 सन् 2004

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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03/09/2004: -

Shri Somnath Verma counsel for the petitioners.

Shri V.V.S. Murthy, Dy. A.G., with Shri Sandeep Dubey, Panel Lawyer for the State/respondent No.3.

Application for urgent hearing is allowed.

Heard.

Learned counsel for the petitioners submitted that petitioner No.1 was appointed as Sub Engineer on 15/09/1980 by the Engineer-in-Chief, Irrigation Department, Bhopal and was posted in the Office of the Chief Engineer, Bargi Canal, Jabalpur. Petitioner No.2 was appointed as Sub Engineer on 11/09/1980 and was posted in the Survey Division, Bhopal. At the time of formation of the new State of Chhattisgarh the petitioners were in Government Service in the domain of State of Madhya Pradesh. The State of Madhya Pradesh with the prior consent of the State of Chhattisgarh vide order dated 24/10/2002 allocated the services of the petitioners to the State of Chhattisgarh and they were posted in the Office of the Engineer-in-Chief, Raipur. Thereafter the petitioners were transferred to the Water Resources Department, Sub Division No.2 at Bhatgaon.

(2) The State of Chhattisgarh vide order dated 23/11/2002 (Annexure-P/1) made a State wide policy to depute Sub Engineers of the

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मामला क्रमांक W.P. 2231 सन् 2004

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित 2 | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Water Resources Department in the Block Office of Janpad Panchayats to check and inspect the public works. In compliance of this order, a direction was issued to all the Chief Engineers of the State to post two Sub Engineers in each Janpad Panchayat within seven days. Vide order dated 30/11/2002 (Annexure-P/3) the Chief Engineer, Mahanadi Godawari Kachhar, Water Resources Department, issued a transfer order of 85 Sub Engineers in the respective Block Offices. Thereafter out of 85 Sub Engineers 20 were declined to join at their respective places. The Chief Engineer vide order dated 06/01/2003 issued another order (Annexure-P/4) deputing the petitioners in the Office of the Janpad Panchayat, Kasdol. In compliance of the said order, the petitioners joined their duties.

(3) Respondent No.1/Janpad Panchayat, Kasdol vide order dated 21/06/2004 (Annexure-P/5) transferred the petitioners to their parent department without taking prior permission of the State Government/respondent No.3. In the said order it is mentioned that as the public works are not going on in the said Janpad Panchayat and since four Sub Engineers are already posted there, the petitioners were relieved there from. In compliance with the said order, the petitioners were sent back to their parent department, but for the reasons best known to the Department, the petitioners were not permitted to join there. More over,

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..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित 3 | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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the Executive Engineer vide memo dated 02/07/2004 issued to the Chief Executive Officer, Janpad Panchayat, Kasdol asked him to permit the petitioners to join their duties as there are no instructions from the Higher Authorities for retaining their services in the parent department. The parent department has however mentioned in its memo dated 21-07-2004 that if they have any special order from the Higher Authorities they should make it available to the parent department. Ultimately, the petitioners gave their joining at Janpad Panchayat, Kasdol but they are not being allotted any work.

(4) Respondent No.1 / Janpad Panchayat, Kasdol wrote a letter dated 07-07-2004 (Annexure-P/8) to respondent No.2- Chief Executive Officer, Zila Pachayat (Development) Raipur, seeking guidelines regarding the posting of the petitioners. Respondent No.2 however, vide its order dated 16-07-2004 (Annexure-P/9) directed the respondent No.1 to act upon the order dated 21-06-2004 and the petitioners be sent back to their parent department. Thereafter, the parent department again wrote a letter dated 16-07-2004 (Annexure-P/10) informing them that since two Sub-Engineers were to be posted in each Block Office, according to the order of the State Government, and accordingly the petitioners were transferred to join their duties in Janpad Panchayat Kasdol, but however, instead of

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित 4 | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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giving them joining, they have been relieved by you by order dated 21-06-2004. The parent department has also mentioned in its letter to make available the order of the State Government in this regard, if any. Even here, the petitioners trouble did not stop. In other words by order dated 22-07-2004 (Annexure-P/11) the Janpad Panchayat, Kasdol again transferred back the petitioners with a direction to join the parent department and the same has been impugned by the petitioners in this petition.

(5). Shri V.V.S. Murthy, learned Dy. Advocate General submitted that as the Janapd Panchayat is not in need of the services of the petitioners, the State Government has no difficulty in taking back the petitioners to the parent department. This submission is placed on record. Learned counsel further submitted that since there was an order from the State Government to post the petitioners to the Janpad Pachayat, they were transferred to join there, but since the Janpad Panchayat itself is not ready to retain the petitioners with them, in that situation, the State Government shall keep the petitioners in their parent department.

(6). Having heard learned counsel for the parties and considered the facts and circumstances of the case, this Court is of the view that it would be appropriate to direct the respondent No.3/State Government to take the petitioners back to the parent department, assign them work and

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित 5 | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | issue the necessary instructions to the concerned department regarding maintenance of the services conditions. Ordered accordingly.<br><br>(7) With the aforesaid observations, the petition stands disposed of.<br><br>Certified copy as per rules.<br><br>Copy to State Counsel for compliance.<br><br>Sd/-<br>Fakhruddin<br>Judge | |

Subhey